

Message Text

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ACTION ARA-14

INFO OCT-01 ISO-00 IO-13 HA-05 EB-08 TRSE-00 CIAE-00
DODE-00 PM-05 H-01 INR-10 L-03 NSAE-00 NSC-05
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E.O. 11652: N/A
TAGS: PGOV PINT SHUM CI
SUBJECT: A GLIMPSE OF CHILE'S NEW DEMOCRACY
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REF: SANTIAGO 2551

1. SUMMARY: THE GOC HAS GIVEN THE CLEAREST PICTURE
YET OF HOW PROTECTED AUTHORITARIAN DEMOCRACY IS TO BE
STRUCTURED. THE EMPHASIS IS ON THE QUALIFIERS. A
POPULARLY ELECTED, MAJORITY, PRESIDENT WILL SERVE ONE
EIGHT YEAR TERM. HIS POWERS WILL BE INCREASED AND IN-
CLUDE THE AUTHORITY TO DISSOLVE CONGRESS ONCE DURING
HIS TERM. MEMBERSHIP IN THE BICAMERAL LEGISLATURE WILL
BE GOVERNED BY STANDARDS DESIGNED TO MINIMIZE INTEREST
GROUP REPRESENTATION. ONE-THIRD OF THE SENATE WILL
BE APPOINTED. MARXIST PARTIES WILL BE BANNED. THE
ARMED FORCES WILL HAVE A PREDOMINANT VOICE IN TWO NEW
INSTITUTIONS: A CONSTITUTIONAL COURT AND A "SECURITY
ORGAN". THE JUDICIARY AND, APPARENTLY, THE CONTRALORIA
GENERAL WILL REMAIN ESSENTIALLY UNCHANGED. THE ORTUZAR
DRAFT REMAINS SUBJECT TO NEGOTIATION (JUNTA AND FUNC-
TIONAL GROUPS), DOES NOT SPECIFY THE LENGTH OF THE
TRANSITION PERIOD; AND INCORPORATES SOME IMPROVEMENTS
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OVER PINOCHET'S CHACARILLAS PLAN BY INCREASING THE ROLE
OF DIRECT ELECTIONS. ORTUZAR MEANS TO PERPETUATE CON-
SERVATIVE STRONGMAN GOVERNMENT, BUT TIMES CHANGE. END SUMMARY

2. IN A PRESS CONFERENCE APRIL 7 CHAIRMAN OF THE CON-
STITUTIONAL DRAFTING COMMITTEE, ENRIQUE ORTUZAR, GAVE
THE PUBLIC THE MOST DETAILED LOOK YET AT WHAT HIS COM-

MITTEE HAS IN MIND FOR CHILE'S GOVERNMENT, THE CORE OF THE PROPOSALS FOR A NEW DRAFT CONSTITUTION THAT PRESIDENT PINOCHET HAS REQUESTED BY MAY 21 (REFTEL). IN CLAIMING THAT IT IS CHILE'S DESTINY TO BE THE FIRST COUNTRY IN THE WORLD TO ESTABLISH A DEMOCRATIC SYSTEM THAT PRESERVES LIBERTY AND DOES NOT ALLOW TERRORISM OR VIOLENCE, ORTUZAR SAID THE WORK OF HIS COMMITTEE WAS BASED ON FOUR PREMISES:

-- THE PREVIOUS POLITICAL ORDER IN CHILE FAILED TO PRESERVE INDIVIDUAL DIGNITY AND LIBERTY AND ENDANGERED CHILE'S SOVEREIGNTY;

-- THEREFORE MORE REFORMS ARE NOT ENOUGH; AN ENTIRELY NEW "FUNDAMENTAL CHARTER" IS NEEDED;

-- THE NEW CONSTITUTION MUST REFLECT CHANGED POLITICAL, SOCIAL, ECONOMIC AND MORAL CONDITIONS;

-- IT IS NOT POSSIBLE TO RETURN TO DEMOCRACY OF THE LIBERAL, CLASSIC, TRADITIONAL TYPE; THAT KIND OF DEMOCRACY CANNOT SURVIVE IN TODAY'S WORLD.

3. THE EXECUTIVE. THE PRESIDENCY WILL BE STRENGTHENED. THE PRESIDENT WILL BE "STRONG, AUTHORITARIAN AND DISINTERESTED, IN THE PORTALIAN STYLE". ONCE THE TRANSITION PERIOD HAS ENDED (ORTUZAR DID NOT SPECIFY A TIME PERIOD), LIMITED OFFICIAL USE

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THE PRESIDENT WILL BE CHOSEN BY DIRECT POPULAR ELECTION FOR A SINGLE EIGHT YEAR TERM. IF NO CANDIDATE WINS A MAJORITY OF VOTES THE FIRST ROUND, THERE WILL BE A SECOND BALLOT. THE PRESIDENT WILL BE ABLE TO DISSOLVE THE CHAMBER OF DEPUTIES ONCE DURING HIS TERM OF OFFICE AND WILL HAVE ADDITIONAL (UNSPECIFIED) NEW POWERS. IF EXECUTIVE BILLS ARE REJECTED BY THE CHAMBER OF DEPUTIES THEY MUST GO TO THE SENATE. IF PASSED BY THE SENATE THEY GO BACK TO THE CHAMBER, BUT CAN ONLY BE PREVENTED FROM BECOMING LAW BY A TWO-THIRDS NAY VOTE.

4. THE LEGISLATURE. DURING THE TRANSITION PERIOD BOTH HOUSES OF CONGRESS WILL BE DESIGNATED. EVENTUALLY A CHAMBER OF DEPUTIES OF 150 PERSONS WILL BE ELECTED BY REGIONS. CANDIDATES WILL HAVE TO LIVE OR WORK IN THE REGION THEY REPRESENT AND THE TERM OF OFFICE WILL BE FOUR YEARS. (ORTUZAR DID NOT SPECIFY WHETHER THERE WILL BE RE-ELECTION). THE CHAMBER WILL INITIATE BILLS AND HAVE A WATCHDOG FUNCTION ('FISCALIZADORA'). THE SENATE WILL HAVE 45 MEMBERS OF WHOM 30 WILL BE ELECTED ON A NATIONAL BASIS. THE REMAINING 15 WILL SERVE BY VIRTUE OF PREVIOUS OFFICE (EX-PRESIDENTS) OR WILL BE

SELECTED BY PEERS WITHIN GROUPS THAT HAVE HELD HIGH
OFFICE (E.G. RETIRED MILITARY CHIEFS WILL SELECT THREE
OR FOUR SENATORS, RETIRED SUPREME COURT JUSTICES

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MIGHT CHOOSE ONE, ETC.) DEPENDING ON THE NUMBER OF
LIVING EX-PRESIDENTS THERE MIGHT BE 46 OR EVEN 47
SENATORS AT A GIVEN TIME.) SENATORS WILL SERVE FOR EIGHT
YEARS AND MUST BE HIGHLY QUALIFIED BY VIRTUE OF EXPERIENCE, ED-
UCATION AND CHARACTER. ORTUZAR SEES THE NEW SENATE AS A
MODERATING FORCE. IT WILL SERVE A REVIEWING AND
ADVISORY ROLE.

5. POLITICAL PARTIES. ORTUZAR PROMISED A SPECIAL
STATUTE SPELLING OUT THE FUTURE, MORE LIMITED, ROLE OF
POLITICAL PARTIES, WHICH WILL BE ALLOWED TO FUNCTION
ONCE AGAIN NEAR THE END OF THE TRANSITIONAL PERIOD.
MARXIST PARTIES WILL BE BANNED. IN ORDER TO REDUCE
THE INCIDENCE OF SPECIAL INTEREST GROUP REPRESENTATION
IN THE CONGRESS (AND, NOT INCIDENTALLY, THE INTRUSION
OF POLITICAL PARTIES INTO FUNCTIONAL ORGANIZATIONS),
ORTUZAR SAID THERE IS LIKELY TO BE A PROHIBITION AGAINST
LEADERS OF INTER ALIA, BUSINESS, LABOR OR STUDENT GROUPS
RUNNING FOR PUBLIC OFFICE UNTIL AT LEAST FOUR YEARS
AFTER THEY HAVE LEFT A LEADERSHIP POSITION.

6. THE JUDICIARY. THE INDEPENDENCE OF THE COURTS WILL
REMAIN AS NOW ALTHOUGH THERE MAY BE SLIGHT MODIFICATIONS
TO THE PRESENT PRACTICE OF PUTTING JUSTICES ON THE
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SUPREME COURT IN STRICT ORDER OF SENIORITY. THE GOAL IS RAPID JUSTICE AVAILABLE TO ALL, PARTICULARLY THE LESS WELL OFF.

7. CONSTITUTIONAL COURT. ORTUZAR WAS NOT SPECIFIC ON THE COMPOSITION OF THIS NEW BODY. IT MAY INCLUDE REPRESENTATIVES OF THE ARMED FORCES AS WELL AS SUPREME COURT JUDGES. IT WILL RULE ON CONFLICTS BETWEEN THE EXECUTIVE AND THE CONGRESS OR THE CONTRALORIA GENERAL. WHEN A PRESIDENT BECOMES PHYSICALLY OR MENTALLY UNFIT FOR OFFICE, A DECISION BY THE SENATE TO REMOVE HIM (HER) WILL REQUIRE CONSTITUTIONAL COURT APPROVAL.

8. "SECURITY ORGAN". THIS TOTALLY NEW INSTITUTION WILL BE COMPOSED OF REPRESENTATIVES OF THE ARMED FORCES, SUPREME COURT, SENATE AND OTHERS (UNSPECIFIED). ITS JOB WILL BE TO ENSURE THAT THE GOVERNMENT DOES NOT STRAY FROM THE BASIC PRINCIPLES OF AUTHORITARIAN DEMOCRACY AS SET FORTH IN THE CONSTITUTION. THE JUNTA WILL HOLD THIS POWER DURING THE TRANSITION PERIOD.

9. THE CONTRALORIA. ORTUZAR MADE NO SPECIFIC MENTION OF THIS UNIQUELY CHILEAN INSTITUTION WHICH RULES ON ALL GOC ACTIONS INVOLVING THE EXPENDITURE OF FUNDS. HE DID HOWEVER MAKE PASSING REFERENCE TO IT AS A BRANCH OF GOVERNMENT IN CONNECTION WITH THE DISPUTE-RESOLVING ROLE OF THE CONSTITUTIONAL COURT. PRESUMABLY IT WILL REMAIN MUCH AS IT IS TODAY.

10. ORTUZAR'S PRESENT DRAFT IS TO BE READY BY MAY 21. IT WILL THEN GO TO THE COUNCIL OF STATE AND TO THE JUNTA FOR COMMENT, BEFORE RETURNING TO THE CONSTITUTIONAL COMMISSION TO BE PUT IN FINAL FORM BY DECEMBER 31.
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PINOCHET HAS ALSO SPOKEN OF OBTAINING THE VIEWS OF LABOR AND OTHER INTERMEDIARY ORGANIZATIONS.

11. COMMENT: IT IS CLEAR FROM THE FOREGOING THAT, AT LEAST AS FAR AS ORTUZA IS CONCERNED, DEMOCRACY IN CHILE IS GOING TO NEED A LOT OF PROTECTING. THREE POINTS SHOULD BE HIGHLIGHTED, HOWEVER;

-- ORTUZAR'S PROPOSALS ARE JUST THAT: A DRAFT SUBJECT TO NEGOTIATION DURING THE REST OF THE YEAR. PRESUMABLY, GENERAL LEIGH'S ADVISERS WILL HAVE SOME COMMENTS AS MAY

THE OTHER FUNCTIONAL GROUPS WHICH ARE TO BE CONSULTED;

-- THE TRANSITION PERIOD STILL HAS NOT BEEN FIXED;

-- THE CURRENT ORTUZAR PLAN IS AN IMPROVEMENT OVER
WHAT PINOCHET HAD OUTLINED AT CHACARILLAS.

12. AT CHACARILLAS PINOCHET HAD SUGGESTED THAT THE
PRESIDENT WAS TO BE APPOINTED BY THE LEGISLATURE; NOW IT
IS CLEAR THAT HE IS TO BE POPULARLY ELECTED. ACCORDING
TO CHACARILLAS, ONE-THIRD OF THE CONGRESS WOULD BE
DESIGNATED. BY APPLYING THE ONE-THIRD IDEA ONLY TO THE
45 MEMBER SENATE, SOME 180 OF THE 195 MEMBERS OF THE PRO-
POSED LEGISLATURE ARE TO BE ELECTED. ORTUZAR MAY BE
UNDERESTIMATING THE RESILIENCE OF PARTISAN POLITICAL
ACTIVITY, AND EFFORTS TO ERODE ITS INFLUENCE THROUGH
REGULATION MAY NOT SUCCEED.

13. STILL, THE HEART OF THE ORTUZAR PROPOSAL IS A
POWERFUL PRESIDENT. HE WILL, FOR EXAMPLE, BE ABLE TO
PASS LAWS WITH THE SUPPORT OF ONLY 23 SENATORS AND
51 DEPUTIES (ONE-THIRD PLUS 1). ORTUZAR ENVISAGES
CONSERVATIVE PRESIDENTS. BUT TIMES CHANGE (WOULD
ORTUZAR HAVE WISHED TO BESTOW SUCH POWER ON FREI?),
AND IT REMAINS FOR OTHER CHILEAN CONSTITUTIONALISTS
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TO COMMENT ON WHETHER THE PRESENT PLAN PROVIDES
ADEQUATE PROTECTIONS AGAINST FUTURE POSSIBLE ABUSES
OF SUCH POWER.
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